

## REMARKS

In the Official Action mailed on January 9, 2004 the Examiner reviewed claims 1-24. Claims 1, 9, and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by Kitai et al (USPN 5,440,750, hereafter "Kitai"). Claims 1-4, 7-12, 15-20, and 23-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Weinberg et al (USPN 6,549,944, hereafter "Weinberg"). Claims 5, 13, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weinberg. Claims 6, 14 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weinberg in view of Sager (USPub 2003/0158885, hereafter "Sager") and further in view of Maeda (USPN 4,621,318, hereafter "Maeda").

### Rejections under 35 U.S.C. §102(b), 35 U.S.C. §102(e), and 35 U.S.C. §103(a)

Independent claims 1, 9, and 17 were rejected as being anticipated by Kitai. Independent claims 1, 9, and 17 were rejected as being anticipated by Weinberg. Applicant respectfully points out that Kitai teaches an execution circuit including a compare and watch instruction (see Kitai, Abstract). Applicant also respectfully points out that Weinberg teaches a system for analysis, management, and load testing of Web sites (see Weinberg, Abstract).

In contrast, the present invention discloses recording statistics related to the usage of mutual exclusion variables to construct a **performance model** of an application in order to predict the performance of the application (see page 6, lines 16-21 of the instant application). Using a performance model of an application in order to predict the performance of the application is beneficial because the performance model may be numerically solved to predict performance (see page 8, line 3-6 of the instant application).

Applicant respectfully points out that a **performance model for an application is NOT the same as the application itself.**

There is nothing within Kitai or Weinberg that suggests constructing a performance model of an application and numerically solving the model in order to predict the performance of the application. Note that Weinberg measures actual performance of web sites. **Weinberg does not construct a performance model** of a web site to determine the performance of the web site.

Accordingly, Applicant has amended independent claims 1, 9, and 17 to include the limitations of claims 7-8, 15-16, and 23-24, respectively, to clarify that the present invention records statistics related to the usage of mutual exclusion variables to construct a performance model of an application that can be numerically solved in order to predict the performance of the application. These amendments find support on page 6, lines 16-21 and on page 8, line 3-6 of the instant application. Claims 7-8, 15-16, and 23-24 have been canceled without prejudice.


Hence, Applicant respectfully submits that independent claims 1, 9, and 17 as presently amended are in condition for allowance. Applicant also submits that claims 2-6, which depend upon claim 1, claims 10-14, which depend upon claim 9, and claims 18-22, which depend upon claim 17, are for the same reasons in condition for allowance and for reasons of the unique combinations recited in such claims.

**CONCLUSION**

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

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